

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADJUSTMENT OF THE RATES OF KENTUCKY-) CASE NO. 2004-00103
AMERICAN WATER COMPANY)

ORDER

The Attorney General (“AG”) and Lexington-Fayette Urban County Government (“LFUCG”) have filed objections to the electronic filing procedures established for this proceeding and have moved that all documents in this proceeding be served upon them in electronic and paper medium. Kentucky-American Water Company (“Kentucky-American”) opposes the motions. Finding good cause exists to require the service of documents in a paper medium, we grant the motions.

Background

On March 24, 2004, Kentucky-American notified the Commission of its intent to apply for an adjustment in its rates. With this notice, it also requested that the Commission use electronic filing procedures to process this case as the Commission had done in the company’s most recent filings. More specifically, Kentucky-American requested that filings be in electronic medium only.

In the past six years, the Commission has increasingly experimented with the use of electronic filing in Kentucky-American’s rate case proceedings. In Case No. 97-034,¹ the Commission permitted Kentucky-American to file an original and a limited

¹ Case No. 1997-00034, Application of Kentucky-American Water Company to Increase Its Rates (Ky. PSC Sept. 30, 1997) at 2.

number of paper copies and 11 copies in an electronic medium. Initially, the electronic filing took the form of the physical submission of a CD-ROM or computer diskette. In Case No. 2000-00120,² Kentucky-American's next rate case proceeding, the Commission extended the electronic filing procedures to all parties in the proceeding, reduced the number of paper copies and required the parties to upload the electronic copy directly on to the Commission's computer network. In both proceedings, all parties mutually agreed to the use of electronic filing procedures and all parties continued to serve other parties with a paper copy of any pleading or document.

Since Case No. 2000-00120, the Commission has continued to refine its electronic filing procedures. Commission Staff developed a web portal that permits parties to Commission proceedings to easily upload files onto the Commission's computer network and to make those files readily available to the public for downloading. Additionally, the Commission required electronic filing procedures for a number of proceedings including the two cases involving the transfer of control of Kentucky-American to RWE Aktiengesellschaft,³ the Commission's investigation of

² Case No. 2000-00120, Adjustment of the Rates of Kentucky-American Water Company (Ky. PSC April 24, 2000).

³ Case No. 2002-00018, Application For Approval of The Transfer of Control of Kentucky-American Water Company to RWE Aktiengesellschaft and Thames Water Aqua Holdings GMBH (Ky. PSC Jan. 30, 2002); Case No. 2002-00317, The Joint Petition of Kentucky-American Water Company, Thames Water Aqua Holdings GMBH, RWE Aktiengesellschaft, Thames Water Aqua US Holdings, Inc., Apollo Acquisition Company and American Water Works Company, Inc. For Approval of a Change of Control of Kentucky-American Water Company (Ky. PSC Sept. 16, 2002).

Kentucky-American's source of supply planning,⁴ and several interconnection arbitration proceedings.

Electronic filing procedures are intended to promote greater economy and efficiency. First, electronic filing reduces the parties' litigation expense by reducing the cost of reproducing and transmitting documents. Electronic copies are less expensive to produce and transmit than paper copies. Moreover, since an opposing party has the option to produce a paper copy only of the documents that it requires, a party is not required to produce and transmit unnecessary paper copies to all parties. Second, electronic documents are easier to organize and transmit. Documents can be stored in a smaller space and are capable of being quickly searched and transmitted to distant locations.⁵ Third, it reduces the time necessary to ship and file documents and allows the parties greater time and flexibility in preparing their cases.

Given our past experience with electronic filing, the Commission, on April 22, 2004, granted Kentucky-American's request for use of electronic filing procedures in its current rate case proceeding and established new procedures. Under these procedures, a party must upload into the Commission's computer network an electronic copy of the pleading or document. At the time of uploading, the party must notify all other parties and the Commission by electronic mail that a filing had been made. The party must also physically deliver to the Commission an original and a paper copy of the

⁴ Case No. 2001-00117, An Investigation Into the Feasibility and Advisability of Kentucky-American Water Company's Proposed Solution to Its Water Supply Deficit (Ky. PSC May 15, 2001).

⁵ For example, responses to discovery requests can be transmitted by electronic mail directly to an expert witness or downloaded by that witness rather than mailed through an express mail carrier or the U.S. Postal Service.

pleadings or documents. Upon receipt of the electronic document, the Commission posts the document to its Web site and notifies all parties of the posting by electronic mail. The filing party **is not required to serve a paper copy of the filing upon any other party.** The receiving parties must access the Commission's Web site and download a copy of the filing. To address any hardships that the procedures might impose, we permitted any party objecting to the procedures to petition to be excused from those procedures.

Two technical concerns required placing responsibility on the receiving party to download documents from the Commission's electronic file depository. First, several of the filings will consist of several large electronic files that are too large to be attached to a single electronic mail message and be accepted by most electronic mail servers. Problems were experienced in a recent case when Kentucky-American attempted to serve several large electronic files as attachments to electronic mail messages. The mail servers of the receiving parties refused to accept the messages. Second, downloading the document from the Commission's depository ensures that the Commission and the parties are viewing the same document.

Motions For Service of Paper Copies

The AG objects to the electronic procedures and has moved for an order requiring service of a paper copy of all documents upon him. In support of his motion, he states that lack of service through a paper copy is a deviation from prior practice and presents "significant hardships and risks." AG's Motion at 2. The AG questions whether the process will reduce his costs or increase the efficiency of the review process. He notes that, in a recent proceeding, he was unable to access certain

documents from the Commission's Web site or through electronic mail. The AG further states his concern that the electronic version of any filing with the Commission may differ from the paper copy that the parties are also required to file with the Commission. He also is concerned about "risks and undue hardships relating to his experts that may result from the deviation from the traditional means of service." AG Motion's at 3.

LFUCG joins in the AG's Motion and Objection. In addition to the AG's arguments, it states that "it is a local government with limited resources" and that its computer system is "often times restricted, limited, or unavailable due to technical problems." LFUCG's Motion at 1.

Opposing the motions, Kentucky-American argues that the benefits of electronic filing significantly outweigh the minor problems of which the AG and LFUCG complain. It points out that the AG concedes that electronic filing has been helpful in previous proceedings and does not object to its use in the current proceeding and notes that the Commission's Order of April 22, 2004 already addresses the AG's concerns by establishing various safeguards to ensure that the filed documents are readily accessible and readable and represent a true and accurate copy of the original filed with the Commission.

Kentucky-American also notes that the Commission's procedures are similar the U.S. Bankruptcy Court for the Eastern District of Kentucky's electronic filing procedures that "work extremely well and provide a great convenience to the court personnel and the parties." Kentucky-American's Response at 4. It states that the Commission's procedures also address and correct problems experienced in other Commission proceedings. Finally, Kentucky-American argues that the procedures should increase

the speed at which the parties receive filings and provide additional time for review of those documents. The procedures, it asserts, provide for faster delivery than the U.S. Postal Service.

Having reviewed the pleadings, we generally concur with Kentucky-American's position. The procedures currently in place should not burden the parties, but result in faster and less costly transmission of documents and pleadings and should allow for the parties to more efficiently litigate this proceeding and the Commission to more effectively review the record. These procedures are consistent with those adopted by the Federal Courts and by many state regulatory commissions.

Despite these benefits, we reluctantly conclude that Administrative Regulation 807 KAR 5:001 specifies service of a paper copy of any pleading or document upon a party granted full intervention. While the Commission may grant a deviation from this regulation, we find a deviation would be inappropriate as electronic filing procedures are still in an experimental phase and as two of the principal parties to this proceeding have not consented to full participation in the experiment. Moreover, requiring the service of a paper copy will not significantly frustrate the objectives of the procedures. The overall number of paper copies will still be reduced, electronic copies of all documents in an easily searchable format will remain available to the parties and the public, and much of the speed and flexibility that accompanies the procedures will be retained.

The Commission finds that, given the recent success of our electronic filing project, the period of experimentation should end and efforts to revise Administrative Regulation 807 KAR 5:001 to mandate electronic filing should begin. We have directed Commission Staff to review Administrative Regulation 807 KAR 5:001 and prepare the

necessary revisions. Upon completion of this review, we will use the administrative regulation promulgation process to obtain public comment and revise our regulations to permit electronic filing. Accordingly, all persons who practice before the Commission should begin preparing for their eventual use of electronic filing procedures and electronic documents.

Summary

Having considered the motions and the response thereto, the Commission HEREBY ORDERS that:

1. The AG's and LFUCG's motions are granted and their objections are sustained.
2. The Commission's Order of April 22, 2004 is vacated.
3. Unless the Commission requires otherwise, all parties to this proceeding shall, when submitting any pleading or other document in this proceeding, file with the Commission an original and one copy in paper medium and one copy in electronic medium.
4. Any document or pleading filed with the Commission shall continue to be served upon all parties in paper medium. Service of any document or pleading shall be made in accordance with Administrative Regulation 807 KAR 5:001, Section 3(7), and Kentucky Civil Rule 5.02.
5. Any party submitting written testimony in this proceeding shall file with such testimony a notice of filing that lists each witness presenting testimony.
6. All parties shall submit the electronic copy of any pleading or document to the Commission by uploading the document(s) using the Commission's Web Application

Portal at https://psc.ky.gov/psc_portal/. All parties shall fully comply with the instructions for electronic transmission and uploading set forth at http://psc.ky.gov/agencies/psc/casefile/filing_instructions_web.pdf.

7. All parties shall make electronic submissions in the following manner:
 - a. All pleadings, documents and exhibits shall be submitted in portable document format (“PDF”) and be capable of viewing with Adobe® Acrobat® Reader.™
 - b. All electronic submissions in PDF format shall be search capable and shall be optimized for viewing over the Internet.
 - c. Any submitted documents that are scanned shall be scanned at a resolution no less than 200 dots per inch (“dpi”) nor greater than 300 dpi.
 - d. The electronic version of each document shall, where appropriate, be bookmarked to distinguish sections of the document.
 - e. All requested spreadsheets in electronic submissions shall be in Microsoft® Excel 97 format, shall be self-contained, and shall not contain any linked references to or macro commands involving external files.
 - f. All electronic submissions shall include an introductory file in PDF format that is named “Read1st” and that contains a general description of the filing, a list of all materials not included in the electronic filing and a statement attesting that the electronically filed documents are a true representation of the original documents. The “Read1st” file and any other document that normally contains a signature shall include a signature in electronic format. The electronic version of the cover letter accompanying the paper filing may be substituted for a general description.

g. All files shall be named in accordance with the naming conventions found at http://psc.ky.gov/agencies/psc/casefile/filing_instructions_web.pdf.

h. If the electronic submission does not include all documents contained in the paper version (e.g., confidential materials; materials that are too large or bulky to transfer by electronic medium), then the absence of these documents shall be noted in the "Read1st" document.

i. No electronic transmission or uploading session shall exceed 20 files or a total size of 100 megabytes. No individual file shall exceed 5 megabytes. If a party's submission will exceed these limitations, the party shall make its electronic submission in two or more consecutive electronic transmission or uploading sessions.

j. A party shall, upon completing its electronic submission of documents to the Commission, notify the Commission and all other parties by electronic mail message. This message shall be transmitted to the Commission at pscfilings@ky.gov and to all parties' designated e-mail addresses, and shall state the nature of the filing, case number, date and time of file(s) transmission, name of the party responsible for the filing, and the name and e-mail address of the person making the electronic filing. It shall also contain, as an attachment, a copy of the "Read1st" file.

k. When submitting documents for which confidential treatment is sought, a party shall:

(1) Submit an original and paper copy and an electronic copy of a petition requesting confidential treatment and setting forth the grounds pursuant to KRS 61.870 upon which the material should be classified as confidential and a copy of the material with those portions for which confidentiality is sought redacted.

(2) Submit a paper copy of the material in question which identifies by underscoring, highlighting with transparent ink, or other reasonable means only those portions which unless deleted would disclose confidential material and a CD-ROM containing an electronic version of such material with highlighting.

8. When filing any document with the Commission, any party participating in this case through electronic means shall certify that:

a. The electronic version of the filing is a true and accurate copy of the document(s) filed in paper medium.

b. The electronic version of the filing has been transmitted to the Commission.

c. The party has, by electronic mail, notified the Commission and the other parties participating in this case by electronic means that the electronic version of the filing has been transmitted to the Commission.

d. The party has served, in paper medium, a copy of its filing upon all parties of record.

9. The Commission's Executive Director shall make all electronic filings available at http://psc.ky.gov/efs/EFS_Search.aspx for public viewing and downloading.

10. a. Within 5 days of the date of this Order, Kentucky-American shall notify the Commission in writing of the e-mail address to which all electronic notices and messages related to this proceeding should be served.

b. Each party granted leave to intervene in this proceeding shall, within 5 days of entry of the Order granting intervention, notify the Commission and all

other parties of record in writing of the e-mail address to which all electronic notices and messages related to this proceeding should be served

11. Except as provided in paragraph 7k of this Order, when a party files a document or pleading with the Commission for which it has not filed an electronic copy, it shall file with the Commission the original document or pleading and 10 copies. The instructions set forth at http://psc.ky.gov/agencies/psc/casefile/filing_instructions_web.pdf are incorporated by reference into this Order. To the extent that any portion of these instructions conflict with the provisions of this Order, the provisions of this Order shall control.

12. Any party serving a request for information upon another party to this proceeding shall at the time of service of that request also serve upon that party by electronic mail an electronic copy of its request. The electronic copy shall be in Microsoft® Word 97 format.

13. A document shall be considered timely filed with the Commission if it has been successfully transmitted in electronic medium to the Commission within the time allowed for filing. The original document, in paper medium, shall be filed at the Commission's offices on the next business day following the electronic filing. Parties shall attach to the top of such submission a paper copy of the electronic mail message from the Commission confirming transmission and receipt of its electronic submission.

14. Each party granted leave to intervene in this proceeding shall file a statement as to whether it, or its agent, is capable of receiving electronic transmissions,

and whether it waives any right to service of Commission Orders by United States mail within 5 days of entry of the Order granting it intervention.

Done at Frankfort, Kentucky, this 27th day of May, 2004.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and flourishes, positioned above a horizontal line.

Executive Director